THE HONOURBALE SRI JUSTICE GODA RAGHURAM

WP NO.19987 OF 1997

Between:

S.Malleswaramma wife of P.Krishnaiah

....Petitioner

Vs.

A.P. State Electricity Board, rep. By its Member Secretary, Hyderabad and others

…Respondents

THE HONOURBALE SRI JUSTICE GODA RAGHURAM

WP NO.19987 OF 1997

ORAL ORDER

By the impugned proceedings dated.03-05-1997 the petitioner was called upon to show-cause why she be not reverted to the lower post of LDC/Revenue Cashier.

The petitioner initially entered the service of the erstwhile A.P.S.E.B as a Typist/Revenue Cashier. This category of the service was integrated into another i.e., LDC, in BPMS No.414 dated.03-05-1989. Paragraph 7(13) of BPMS No.414 also enjoined a reservation in every 10th vacancy of UDC for LDCs coming from the stream of Typist/Revenue Cashier. In short Lower Division Clerks coming from the erstwhile stream of Typist/Revenue Cashier are entitled to be considered in every 10th vacancy of UDC posts in the service. Under this dispensation the petitioner was considered and promoted as U.D.C with effect from 26-07-1996. Later by the orders in BPMS No.217 dated.18-01-1997 the Board of the 1st respondent cancelled the earlier orders in BPMS No.414.

As per the orders in BPMS No.217 it would appear that in BPMS No.664 dated.05-08-1981 the 1st respondent issued orders exempting from the requirement of passing the departmental tests to persons holding the posts of LDC/Typist/Steno-typist and U.D.C who have a good record of service and have completed 15 years service in the same post for enabling career advancement. Qualified employees aggrieved by such exemption granted to un-qualified employees filed a writ petition in this court challenging the orders in BPMS No.664.

Initially the writ petition was dismissed and eventually the challenge was upheld by a Division Bench, which quashed the order in BPMS No.664, by the judgment dated.17-10-1993 in W.P.No.8488 of 1988 and batch. Consequently the 1st respondent issued a memo dated.21-11-1983 for filling up the vacancies by promotions in the categories of UDC/Accountants etc., by qualified and eligible persons duly following the provisions in the service regulations. Some of the unqualified employees preferred appeals by Special Leave to the Supreme Court against the Division Bench judgment dated.17-10-1993 referred to supra. Initially the judgment of the Division Bench was stayed and eventually civil appeals were allowed. The Supreme Court held that the Board of the 1st respondent had the power, authority and jurisdiction to grant the exemption. The orders in BPMS No.664 dated.05-08-1991 were upheld.

To implement the judgment of the Supreme Court above referred, the 1st respondent issued BPMS No.217 cancelling the orders issued in BPMS Nos.664,442, 326 and the orders contained in para.7(13) of BPMS No.414. From the orders in BPMS No.217 (from which the above information has been culled out), it does not appear that the LDCs coming from the stream of Typist/Revenue Cashier were afforded a special window of opportunity for promotion as U.D.Cs in every 10th vacancy, in transgression of any of the service Regulations or beyond the powers of the 1st respondent-Board. It is also not apparent as to how para.7(13) of BPMS No.414 is inconsistent with the law declared by the Supreme Court in Civil Appeal preferred against the judgment of the Division Bench of this Court dated.17-10-1993 in W.P.No.8488 of 1988. At least it is not apparent from the averments in BPMS No.217.

Unfortunately there is no counter filed to this writ petition of the year 1997 despite a lapse of more than a decade since its institution.

There is also no representation on behalf of the A.P.S.E.B despite the cause list reflecting the appearance by the Standing Counsel of the A.P.S.E.B, for the respondents. In the circumstances and in the light of the non-traverse to the averments and assertions in the writ petition it must be inferred that the order in BPMS No.217 to the extent there is cancellation of the provisions of para.7(13) of BPMS No.414 dated.03-05-1989 is unsustainable. As a consequence of this conclusion the petitioner cannot be considered as unqualified to be promoted as U.D.C on 26-07-1996 in the 10th vacancy in terms of BPMS No.414. Resultantly, the impugned order proposing her reversion is unsustainable and is so declared.

The writ petition is allowed. There shall be no order as to costs.

GODA RAGHURAM,J

6th SEPTEMBER 2007
Note:
Issue CC
As soon
As possible
(B/o)
***TSNR**